

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND)	
SOUTHWEST AREAS PENSION FUND;)	
and ARTHUR H. BUNTE, JR., Trustee,)	Case No. 10 CV 355
)	
<i>Plaintiffs,</i>)	Judge Robert M. Dow, Jr.
)	
v.)	Magistrate Judge Nolan
)	
MESSINA TRUCKING, INC.,)	
a Michigan corporation, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

PLAINTIFFS' AGREED MOTION FOR ENTRY OF JUDGMENT ORDER

NOW COME Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund (the "Fund") and Arthur H. Bunte, Jr., trustee (together with the Fund collectively referred to as "Central States"), by and through their undersigned counsel, and hereby submit Plaintiffs' Agreed Motion for Entry of Judgment Order.

In support of this motion, Plaintiffs state as follows:

1. Central States filed this action to collect interim withdrawal liability payments from Defendants under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. § 1001, *et seq.*

2. This Court entered a judgment order against some of the Defendants on October 28, 2011. (Dkt. 67.) The judgment was based upon the Court's Memorandum Opinion and Order dated September 27, 2011, which ruled, in part, that: (a) Messina Products, L.L.C. ("Messina Products") was a trade or business under 29 U.S.C. § 1301(b)(1); and (b) Stephen L. Messina

and Florence Messina (collectively the “Messinas”) were not personally liable for the withdrawal liability at issue because they did not operate an unincorporated trade or business.

3. Following the Court’s entry of the judgment order, the parties filed cross-appeals with the United States Court of Appeals for the Seventh Circuit.

4. On February 8, 2013, the Seventh Circuit affirmed the Court’s judgment with respect to Messina Products, but reversed and remanded the Court’s judgment with respect to its finding that the Messinas were not personally liable for the withdrawal liability at issue.

5. Messina Products and the Messinas have advised Plaintiffs’ counsel and the Court that no further proceedings are necessary in this matter and that a final judgment should be entered against them in accordance with the Seventh Circuit’s opinion.

6. In light of the Seventh Circuit’s opinion, a final judgment order should be entered ordering the Messinas to make the future interim withdrawal liability payments.¹

7. Additionally, under ERISA, 29 U.S.C. §§ 1132(g)(2) and 1451(b), a plan who prevails in an action to collect withdrawal liability is entitled to the recovery of its attorney’s fees and costs. The rule regarding the award of attorney’s fees and costs to a plan applies equally to fees and costs incurred on appeal. *See Cent. States, Se. & Sw. Areas Pension Fund v. Kroger Co.*, 226 F.3d 903, 915 (7th Cir. 2000); *Cent. States, Se. & Sw. Areas Pension Fund v. Wintz Properties, Inc.*, 155 F.3d 868, 876 (7th Cir. 1998).

8. Here, Plaintiffs have incurred a total of \$28,474.72 in attorney’s fees and costs in connection with post-judgment matters and the appeal. Defendants, through their counsel Paul E. Robinson, have agreed to the award of \$28,474.72 in attorney’s fees and costs.

¹ A similar order was contained in the Court’s Judgment Order dated October 28, 2011, with respect to the Defendants that the Court entered a judgment against. Since the Court did not enter a judgment against the Messinas, such an order should be entered now.

9. Defendants have also agreed that the Court should grant this Motion by entering the proposed Judgment Order.

10. A copy of the proposed Judgment Order is attached hereto as Exhibit A and will be submitted electronically to the Court's proposed orders e-mail address.

WHEREFORE, Plaintiffs request that this Court grant this Motion by entering the proposed Judgment Order attached hereto as Exhibit A.

Respectfully submitted,

/s/ Charles H. Lee

Charles H. Lee (ARDC #6244633)

CENTRAL STATES FUNDS

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May 15, 2013

ATTORNEY FOR CENTRAL STATES

CERTIFICATE OF SERVICE

I, Charles H. Lee, one of the attorneys for the Central States, Southeast and Southwest Areas Pension Fund, certify that on May 15, 2013, I electronically filed the foregoing *Plaintiffs' Agreed Motion for Entry of Judgment Order* with the Clerk of the Court using the ECF system. This filing was served on all parties indicated on the electronic filing receipt via the ECF system.

/s/ Charles H. Lee

Charles H. Lee (ARDC #6244633)

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